may enter or remain in any underground area unless a preshift examination has been completed for the shift.

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[FR Doc. 97–16963 Filed 6–27–97; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DoD 6010.8–R]**

**RIN 0720–AA32**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Program for Persons with Disabilities; Basic Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule simplifies the administration of benefits under the CHAMPUS Program for the Handicapped (PFTH) and changes the name of this benefit to Program for Persons with Disabilities (PFPWD); adds occupational therapists in independent practice to the list of authorized individual professional providers; provides criteria for cost-sharing certain procedures when data is transferred electronically from the patient's home to a medical practitioner; defines and limits plans recognized as supplemental insurance under CHAMPUS; and adopts the Federal Claims Collection Act and the Federal Claims Collection Standards by reference.

**DATES:** This rule is effective October 28, 1997, except § 199.11(g)(1) which is effective November 15, 1990.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

**FOR FURTHER INFORMATION CONTACT:** Michael Kottyan, telephone (303) 361–1120.

**SUPPLEMENTARY INFORMATION:** The CHAMPUS supplements the availability of health care resources for Military Health Services System (MHSS) beneficiaries. The MHSS consists of military hospitals and the CHAMPUS. CHAMPUS consists of basic general medical and surgical benefits, and non-medical benefits through the Program for Persons with Disabilities (PFPWD).

A summary of written comments received, the CHAMPUS response, and the amendments being made by this final rule follow.

### I. Program for Persons With Disabilities (PFPWD)

On June 10, 1991, a proposed rule was published in the **Federal Register** (56 FR 26635) regarding administrative revisions to the CHAMPUS Program for the Handicapped (PFTH), which included renaming these benefits the Program for Persons with Disabilities (PFPWD).

By law, PFPWD benefits are limited to spouses or children with diagnosed moderate or severe mental retardation, or serious physical disability, who have an active duty Uniformed Service Member sponsor, or who are determined to be an abused dependent of certain former Members. Unlike the basic benefit, the PFPWD applies a fixed, pay-grade based cost-share amount regardless of the amount of expense allowable as a benefit (basic benefit beneficiary cost-share is a percentage of the allowed amount), has no annual deductible amount, includes certain necessary services and items that are not medical in nature, and has a $1,000 per month benefit limit for most beneficiaries.

A distinctive aspect of the PFPWD is the statutory requirement that ties eligibility for benefits to the use of public facilities to the extent that such facilities are available and adequate to meet a specific disability related need.

CHAMPUS PFPWD benefits do not alter the obligations which Section 504 of the Rehabilitation Act, as amended, and the Americans with Disabilities Act, as amended, places upon CHAMPUS providers, nor are CHAMPUS benefits a substitute for special education and related services associated with a free appropriate public education which the Individuals with Disabilities Education Act, as amended, makes available.

*Comment:* Two comments noted that this rule should use the type of language currently preferred by the disability community. The terms ''handicap'' and ''the handicapped'' are no longer acceptable. The preferred forms are ''disability'' and ''persons with disabilities.''

*Response:* We have renamed the Program for the Handicapped (PFTH) the Program for Persons with Disabilities (PFPWD). This name change recognizes that the term ''handicapped'' presumes an unavoidable consequence of illness or injury that unnecessarily discounts the capabilities of every CHAMPUS beneficiary with a disability. Editorial changes throughout the final rule are responsive to current terminology preferences.

*Comment:* The statement that PFPWD beneficiaries reside, with few exceptions, within Military Treatment Facility catchment areas, and that the proposed change will facilitate beneficiary access to needed services and items is not true for the other three Uniformed Services and could adversely affect the Coast Guard, the Public Health Service, and the National Oceanic and Atmospheric Administration.

*Response:* We are aware that MHSS beneficiaries with sponsors in these Uniformed Services are not usually within a military hospital's catchment area. PFPWD eligibility determination, benefit authorization, and related support, will continue to be available through the network of regional CHAMPUS contractors.

*Comment:* A PFPWD qualifying condition is required to be certified again at least every 36 months. For certain conditions (i.e. severe mental retardation, cerebral palsy with paralysis, muscular dystrophy, missing essential body parts, etc.) there will never be a change in PFPWD clinical eligibility. A list of conditions which do not require frequent certification should be used.

*Response:* We have removed the 36 month review requirement. Rather than a list, reviews will now be based upon the prognosis for a change in the qualifying condition.

*Comment:* One comment recommended extending PFPWD benefits to retired members because, in many cases, beneficiaries will never lose their dependence on the sponsor. Special needs beneficiaries may force sponsors to remain on active duty longer than they desire merely to remain eligible for PFPWD.

*Response:* The limitation of PFPWD benefits to dependents of active duty uniformed service members is a requirement of the law that authorizes PFPWD benefits.

*Comment:* Two comments noted that the provisions for transportation should allow movement from one State to another when necessary to obtain care.

*Response:* We have clarified the transportation exclusion to assure that transportation between any of the United States, and certain other areas defined as a state by the Regulation, is not excluded.

*Comment:* The current edition of the Diagnostic and Statistical Manual of Mental Disorders is the Third Edition, Revised; Down Syndrome is generally preferred to Down's Syndrome; the phrase ''. . . are eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) . . .'' should be used throughout when referring to Medicaid benefits; and Medicaid

Intermediate Care Facilities are now termed Medicaid Nursing Facilities.

*Response:* We will specify the most current edition of the Diagnostic and Statistical Manual of Mental Disorders in administrative instruction. All other technical changes have been incorporated into this final rule.

*Comment:* The proposed changes appear to place the active duty sponsor at a higher financial risk under the PFPWD than those active duty sponsors using basic benefits. There is presently a $1,000 catastrophic cap for basic benefits and the governments would then assume a payment obligation of the cost-share over that cap. Any additional cost for care under the PFPWD beyond the $1,000/month benefit limit remains the responsibility of the active duty sponsor.

*Response:* The catastrophic loss protection provision of law does not allow PFPWD cost-share amounts, or amounts in excess of the $1,000/month PFPWD benefit limit paid by a beneficiary, to be counted toward the catastrophic loss active duty family threshold of $1,000/fiscal year. Only basic benefit deductible and cost-share amounts can be applied to this threshold. PFPWD beneficiaries obtain most of their medical care as a basic benefit. These changes to the PFPWD provide the active duty sponsor with more control over financial risk by allowing a choice between PFPWD or basic benefits where no choice previously existed. PFPWD allowable services and items which are excluded as basic benefits include institutional care for protective custody or training, training, special education, nonmedical equipment, transportation, and certain prosthetic devices. A key consideration when a choice between PFPWD or basic benefits is available is catastrophic loss protection. We have addressed the issue of informed choice between basic and PFPWD benefits in two ways. First, we will provide written guidance and training for Health Benefits Advisors at Military Treatment Facilities regarding the beneficiary cost-share liability implications of using PFPWD benefits, rather than basic benefits, whenever such a choice exists. Second, we have added a provision to this final rule that will assure that a family that finds they inadvertently have a liability for PFPWD benefits, that would otherwise not have existed after activation of the basic benefit catastrophic loss protection, will have a way to request relief.

*Comment:* The proposed rule would define rehabilitation as ''the restoration of physical functioning lost due to illness or injury.'' By focusing narrowly on physical functioning, we fear that this definition would serve to limit the range of services available to address the rehabilitation needs of the physically handicapped. Rehabilitation restores not only the physical functioning of an individual, but also the individual's physiological, social, vocational, educational, and economic adjustment to the handicap. The proposed rule lists categories of services available under the PFPWD benefit and addresses some nonphysical aspects of rehabilitation, such as training and special education. We are encouraged that CHAMPUS does not intend to limit rehabilitation services to those related strictly to physical functioning. However this list does not explicitly mention services related to the individual's psychosocial needs. We suggest a clearer and more explicit treatment of the scope of rehabilitative services available under the PFPWD. Fist we recommend defining rehabilitation as the restoration of physical, psychological, social, vocational, and educational functioning lost due to illness or injury. Second, we would add explicit recognition of the broad range of rehabilitative services that may be necessary to restore or improve functioning for the physically handicapped.

*Response:* We agree that physical rehabilitation is but one facet of restoring an individual's ability to function. We have rewritten this definition to accommodate the extensive scope of providers and processes which pursue restorative outcomes for a growing range of dysfunctions. The revised definition focuses upon functional limitation reduction as the critical outcome produced by rehabilitative processes. The widest scope of individual need, with allowance for the dynamic nature of the rehabilitative process, is subsumed within this definition. Rather than simply restating well established elements of rehabilitative focus and treatment at the regulatory level, we have chosen to create an outcome standard for these benefits which allows maximum flexibility for identifying services and items that confirm, arrest, or reduce disabling effects of a qualifying condition. This approach allows responsiveness to the success of traditional, evolving, and emerging rehabilitative and habilitative resources in providing functional gains to CHAMPUS beneficiaries.

*Comment:* The ''in whole or in part'' phrase should be deleted from the definition of public facility adequacy. This phrase suggests the possibility that care could be fragmented among several providers, a result we do not believe CHAMPUS intended. For example, a public facility may be funded only to provide for a specific number of physical therapy sessions per week, but based on the medical opinion of the practitioner, the patient requires more frequent services. Under the proposed definition the individual's needs could be met ''in part'' by this facility, so it would be considered adequate and the individual would be required to use it. The additional services, beyond what the public facility can provide, would have to be obtained from another provider or paid for out-of-pocket.

*Response:* We have deleted this phrase and have rewritten the provision to avoid such conflicts.

*Comment:* Although we support the changes being proposed, we have concern that the CHAMPUS program itself, for which changes are not being proposed, is also in need of revision. We would encourage you to propose recommendations to change the basic CHAMPUS legislation so that children with less severe disabilities would also be eligible for services, and that the $1,000 per month limitation on services be expanded.

*Response:* The $1,000/month PFPWD benefit limit and related eligibility criteria are provisions of law. Beneficiaries with less than serious disability have access to basic benefits which provide a wide range of medical and allied health services. Long-term use of the entire $1,000/month PFPWD is rare. Such maximum benefit use is predominantly associated with declining use of long term residential care.

*Comment:* Although some limitations are statutory, it appears that it would be possible to revise the proposed regulation so that persons with disabilities have access to CHAMPUS benefits more in line with the intent of Section 504 of the Rehabilitation Act (29 U.S.C. 794). This law is implemented within the Department of Defense by DoD Directive 1020.1, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense,'' dated March 31, 1982. It seems unfair that the proposed regulation requires persons with disabilities to make choices about benefits that could result in their losing money. In some situations, beneficiaries could be forced to trade one type of benefit for another. In other situations, they could lose benefits because of an ill-advised choice. By contrast, benefits are straightforward for beneficiaries who are not disabled and therefore have no need for the special program. CHAMPUS beneficiaries, whether they are disabled or not, should receive the

maximum benefits to which they are entitled in any particular situation. Proposed language states in effect, that the wrong decision about benefits is irreversible. This language should be deleted and replaced with provisions that make CHAMPUS staff responsible for assuring that beneficiaries with disabilities receive all the benefits for which they are eligible.

*Response:* Assisting beneficiaries make prudent health care choices is a responsibility shared by many Military Health Services System (MHSS) entities. CHAMPUS will provide Policy Manual guidance and CHAMPUS Handbook and pamphlet information to assist beneficiaries to determine the best election of benefits in a given family's situation. Ongoing public information efforts can be responsive to demonstrated beneficiary understanding of the choices among MHSS benefit options. We have also provided administrative means to minimize any adverse economic effect upon the beneficiary or family of PFPWD use because of basic benefit catastrophic loss protection.

*Comment:* The definition of the term serious physical handicap imposes a ''substantial productive activity'' limitation on persons who have qualifying disabilities. Does this mean that a dependent teenager who uses a wheelchair and has a part-time job would not be covered? It would be preferable to use a functional definition, such as the one in DoD Directive 1020.1, instead of linking the definition to productivity.

*Response:* Employability has never been a PFPWD eligibility criterion. However, we have rewritten the definition of ''Serious Physical Handicap'' (as ''Serious Physical Disabilities'') and added complementary definitions for ''Major Life Activity'' and ''Handicap'' to focus upon the underlying loss of function rather than the productivity of the beneficiary.

*Comment:* Proposed language suggests that services that should be provided for pupils with disabilities through public schools, or through DoD operated schools, are to be funded through this CHAMPUS cost-sharing program. There should be clarification of the relationship of this program to requirements under DoD Directive 1342.16, ''Provision of Free Public Education for Eligible Dependent Children pursuant to section 6, Pub. L. 81–874, as amended.''

*Response:* CHAMPUS will treat DoD Directive 1342.16 schools the same as any other local educational agency within the state in which the DoD school is located. The Individuals with Disabilities Education Act requires persons with disabilities be provided a free public education. Accordingly, special education services that are within the State Plan required by the Act, and are a part of a beneficiary's Individual Educational Plan, are excluded as a PFPWD benefit. Such exclusion is because of the Act's requirements upon public schools, and because CHAMPUS statutory authority requires that to qualify for PFPWD benefits, public facilities, such as public schools, must be used to the extent available and adequate. Because CHAMPUS benefits have legally imposed beneficiary cost-share requirements (and benefit amount limits for PFPWD benefits) the Act's requirement that the student or parents not be charged for such services cannot be met.

*Comment:* This regulation should include a statement that all CHAMPUS services are provided in accordance with DoD Directive 1020.1 [Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense]. Complaints under Section 504 [of the rehabilitation Act] indicate the need for special attention to certain requirements. For example, there would be specific references to telecommunication devices and certified sign language interpreters for persons who are deaf, as well as special signs and readers for persons who are blind and architectural accessibility and personal assistants for individuals with other types of disabilities.

*Response:* We have made explicit in this final rule that the services of an interpreter, reader, or personal assistant is an allowable PFPWD benefit when the service is not an adjunct to receipt of a PFPWD allowable service or item. PFPWD cost-share of these types of services for beneficiaries with serious disabilities does not relieve CHAMPUS providers of their obligation to provide CHAMPUS beneficiaries with disabilities equal access, to include the provision of communication resources and architectural accessibility.

*Overview of PFTH/PFPWD Changes*

Editorial changes have been made throughout this final rule, including the addition and reorganization of material for clarity. The following provides an overview of the changes to those sections in this final rule pertaining to the PFPWD. Substantial changes between the proposed and final documents are noted.

*Section 199.2, Definitions*

The proposed definitions for rehabilitation and habilitation have been rewritten to focus upon the reduction of inability to function rather than upon the underlying cause of the disability. We have rewritten the definition of ''serious physical disability'' for clarity and have added supporting definitions for ''handicap'' and ''major life activity.'' We have moved the definitions for ''public facility availability'' and ''public facility adequacy'' from § 199.5 to § 199.2. Other definitions are unchanged.

*Section 199.5(a), General*

The name Program for the Handicapped (PFTH) has been changed to Program for Persons with Disabilities (PFPWD).

We have shortened the proposed statement of purpose to focus upon reducing disabling effects.

We have allowed the beneficiary the choice of using PFPWD or basic benefits whenever possible. This changes the PFTH policy that resulted in loss of access to basic benefits for outpatient services directly related to the disability.

We have continued to exclude the use of basic benefits to cover otherwise allowable PFPWD benefit cost which is not payable because the monthly PFPWD benefit limit has been reached. The law authorizing PFPWD benefits prohibits the government from paying, in any month, an amount which exceeds the maximum allowable PFPWD benefit; consequently, basic benefits cannot be used to pay for any PFPWD benefit residual expense once the PFPWD monthly benefit limit is reached.

We have added a provision for readjudication of claims when the PFPWD created a cost-share liability for services or items which would not otherwise have been incurred due to basic benefit catastrophic loss protection.

We have separated the determination of PFPWD eligibility from the adjudication of benefit requests. PFTH eligibility previously had to be established each time a benefit was requested. This change will significantly reduce the paperwork required for a beneficiary to access PFPWD benefits.

We have continued to require information about how a requested benefit will contribute to confirming, arresting, or reducing the disabling effects of a qualifying condition.

We have removed the absolute requirement for PFPWD benefit preauthorization by allowing those services or items requiring

preauthorization to be specified in administrative policy. Preauthorization serves to safeguard the beneficiary from benefit denials.

We have limited the maximum length of a benefit authorization to six months.

We have provided for retrospective waiver of a required preauthorization on a case-by-case basis.

We have rewritten public facility use requirements to promote continuity of care.

We have allowed the Commander of a Military Treatment Facility to certify the lack of public facility availability or adequacy.

We have provided for benefit approval when a public official refuses to provide a public facility use certification so as not to disadvantage a beneficiary due to circumstances beyond the beneficiary's control.

We have provided that repair or maintenance for owned equipment does not require public facility use certification. This type of service is rarely available through a public facility and timely access to such services is usually critical to the beneficiary with a disability.

We have provided that more than one item of the same type of equipment for the same beneficiary may not be authorized concurrently.

We have eliminated the requirement that public facility availability be determined for both the beneficiary's domicile and the sponsor's domicile when beneficiary and sponsor are separated following a Service Member's permanent change of duty station.

We have removed the absolute 36 month review cycle for qualifying conditions in recognition that certain conditions will not change over time.

We have added a provision to assure that no beneficiary receiving PFPWD benefits loses eligibility solely as an unintended consequence of these administrative changes.

*Section 199.5(b), Eligibility*

We have added certain abused dependents as a new PFPWD eligibility category as required by law.

We have explicitly accommodated latent qualifying conditions which cannot usually be definitively diagnosed in infancy, but for which early clinical intervention is considered appropriate to minimize disabling effects.

We have removed the detailed criteria and discussion of mental retardation in favor of the diagnostic criteria in the ''Diagnostic and Statistical Manual of Mental Disorders'' published by the American Psychiatric Association. The Third edition, Revised, will apply immediately, and newer additions will apply as they are published.

We have removed the examples of conditions that may cause serious physical disability. This material was only informational. Such screening criteria can be more responsive to changing technology and standards of care when issued as administrative guidance.

We have removed the provision that extended PFTH benefits beyond the date of eligibility for benefits.

*Section 199.5(c), Benefits*

Statutory benefit categories have been defined and types of derived benefits have been described.

A standard of necessity has been established to permit services and items to be allowed which are not explicit in this rule (derived PFPWD benefits).

*Section 199.5(d), Exclusions*

We have excluded inpatient acute care as it is fully available as a basic benefit and such care is likely to usually exceed the $1,000/month PFPWD benefit limit.

We have excluded structural alterations to buildings as a type of service outside the scope of authorized benefits.

We have excluded homemaker, sitter, or companion services as custodial care.

We have defined certain adjunct services as benefits because they are directly related to the efficiency and purpose of the PFPWD, and are consistent with Department of Defense Directive 1020.1 regarding ''Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense.''

We have excluded dental care and orthodontic treatment since dental care is not included in the statutory authority for PFPWD benefits.

We have excluded nondomestic travel for care and treatment. Active duty dependents officially residing with an active duty Service Member outside of the United States are the responsibility of the Sponsor's Military Command which will provide medical evacuation to the United States for medical treatment when necessary.

We have excluded the cost differential for deluxe accommodations for allowable travel when not necessary to the safety of the beneficiary.

We have rewritten and shortened transportation related exclusions to improve clarity.

We have excluded payment for services or items when the beneficiary has no legal obligation to pay.

We have excluded services or items furnished by a public facility. CHAMPUS benefits are, by law, last pay to other health care benefits for which the beneficiary is eligible (Medicaid excepted).

We have excluded study, grant, or research programs as services or items not rendered in accordance with accepted standards as investigational or experimental in nature.

We have excluded services or items provided by immediate family or household to minimize conflict of interest.

We have excluded court ordered care, unless such care would otherwise be a PFPWD benefit.

We have excluded excursions as beyond the scope of the PFPWD travel benefit.

We have excluded therapeutic absences.

We have clarified that drugs and medicines must meet basic benefit criteria.

We have added an exclusion of medical devices which are not approved for commercial distribution by the U.S. Food and Drug Administration.

*Section 199.5(e), Cost-share Liability*

Minor editorial changes were made for improved clarity.

*Section 199.5(f), Benefit Payment*

We have added this paragraph to consolidate payment related requirements that were scattered throughout the proposed rule.

*Section 199.6(e), Providers*

We have established PFPWD-unique providers as a separate class of CHAMPUS providers due to the extra medical nature of PFPWD-unique benefits.

We have added a provision that allows exclusion or suspension of a provider of PFPWD services or items due to a pattern of discrimination on the basis of disability.

*Section 199.7(f), Preauthorization*

We have removed the detailed documentation requirements for PFPWD claims as this level of detail is more flexibly addressed in administrative guidance.

*Section 199.8(d), Special Considerations*

We have established that Medicaid (services and items eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act) is not to be considered a public facility resource in PFPWD adjudication. Medicaid is not considered to be ''other insurance'' for CHAMPUS coordination of benefits.

**II. Occupational Therapists**

On March 8, 1995, a proposed rule was published in the **Federal Register** (60 FR 12717) regarding several issues including the addition of occupational therapists in independent practice to the list of authorized individual professional providers recognized by CHAMPUS. This will allow qualified self-employed occupational therapists to be authorized for direct CHAMPUS payment for allowable services.

We received four comments regarding this proposed change.

One comment from a national association voiced strong support for the proposal and recommended that this change be implemented retroactively. Unless there is a statutorily-established effective date or some compelling reason for making a change retroactive, we do not normally implement benefit changes retroactively. We do not believe any such compelling reason exists for this change.

One comment from another national association suggested that CHAMPUS modify its reimbursement policy to include coverage for the services of physical therapy assistants who are employed by independently authorized physical therapists. We will look into this possibility, but such a change would require publication of a proposed rule. Therefore, we are not including it in this final rule.

Two comments were received from occupational therapy providers who strongly supported this change.

**III. Procedures Involving the Electronic Transfer of Data**

On September 24, 1991, a proposed rule was published in the **Federal Register** (56 FR 48134) regarding criteria for allowing clinical procedures and consultations involving transtelephonic monitoring and electronic data transfer.

No written comments were received during the public comment period.

The CHAMPUS Basic Program excludes payment for ''services or advice rendered by telephone or other telephonic device, including remote monitoring, except for transtelephonic monitoring of cardiac pacemakers''. This exclusion promotes the quality of care standard that a substantive service of a diagnostic or treatment nature requires a face-to-face contact between provider and patient. Transtelephonic monitoring exception for cardiac pacemakers, added in 1984 [49 FR 35934], recognized that remote monitoring can be an efficient alternative to certain outpatient visits to a physician's office or hospital. Coverage of a procedure subsequent to the promulgation of this final rule requires that both clinical and fiscal advantages be demonstrated compared to the procedure without the electronic data transfer element.

**IV. Supplemental Insurance**

On June 12, 1991, a proposed rule was published in the **Federal Register** (56 FR 26946) regarding CHAMPUS-supplemental insurance plans.

In compliance with applicable statutory provisions (10 U.S.C. 1079 (j)(1) and 10 U.S.C. 1086 (d)) on double coverage CHAMPUS pays benefits only after all other health plans have made payment, with the exception of Medicaid and certain insurance policies that are specifically designed to supplement CHAMPUS benefits. This means that if a CHAMPUS beneficiary has another health plan, the other plan must pay whatever it covers before CHAMPUS will make any type of payment. The CHAMPUS beneficiary may have coverage through an employer, an association, or a private insurer. This also includes any coverage for which students may qualify through school health plans. In most circumstances, after the CHAMPUS beneficiary's other plan has paid its maximum benefits, then CHAMPUS will pay for covered services up to the amount it would have paid, had there been no other health benefits plan involved.

This provision will assist CHAMPUS beneficiaries, providers, and other third-party payers by clarifying what is recognized as a supplemental insurance plan.

The regulation previously provided that coverage specifically designed to supplement CHAMPUS benefits was not considered a double coverage plan. This provision lacked the specificity needed in light of attempts by some insurance plans to achieve second pay status by merely defining themselves as supplementary plans even though their coverage may not be limited to CHAMPUS beneficiaries.

To qualify as supplemental insurance, such insurance must meet the definition and criteria under supplemental insurance plan in § 199.2(b).

One comment suggested removal of criterion iii from the definition of Supplemental Insurance Plan assuming that it would limit the extent of supplemental insurance which CHAMPUS beneficiaries may purchase. Criterion iii was retained since it is *not* a limitation on the amount of insurance which CHAMPUS beneficiaries may purchase. It merely defines the purpose of supplemental insurance; which is to pay for services not covered by CHAMPUS.

Some comments suggested that criterion v defeated the purpose of supplemental insurance because it was interpreted to mean that the supplemental insurance could not pay the deductible and cost-share on behalf of the subscribers. That was not the intent of criterion v, but in the interest of clarifying its intent, the wording was revised to state that the supplemental insurance coverage cannot result in lower deductibles and cost-shares than those imposed by law. The supplemental insurance may pay the legally imposed deductibles and cost-shares on behalf of the subscribers, but cannot impose arbitrarily lower amounts nor can it waive the deductibles or cost-shares.

Other comments suggested adding a statement to criterion iii, to the effect that supplemental insurance may also provide coverage for costs in excess of the CHAMPUS allowable charges. That suggestion was accepted and the wording was added under criterion iii.

A Health Maintenance Organization (HMO) suggested adding wording that would permit the HMO to offer supplementary insurance through one of its affiliates since the HMO is not an indemnity insurance plan. We have added wording that will accept supplemental insurance plans offered by HMOs.

**V. Federal Claims Collection Act**

On September 24, 1991, a proposed rule was published in the **Federal Register** (56 FR 48135) regarding CHAMPUS use of the Federal Claims Collection Act and the Federal Claims Collection Standards and former spouse eligibility. The former spouse portion of the proposed rule is not being published as a final rule at this time and will be included in a future complete update of the eligibility section of the CHAMPUS regulation (§ 199.3). No written comments were received during the public comment period.

The amendment of both the Federal Claims Collection Act, 31 U.S.C. 3711(a)(2) and the Federal Claims Collection Standards, 4 CFR 103.1 and 104.1, allows Federal Agencies to compromise, suspend, or terminate collection actions on claims when the amount, exclusive of interest costs, does not exceed $100,000. This rule adopts, by reference, the language of the Federal Claims Collection Act and Federal Claims Collection Standards so that future amendments to the Act and the Regulation will not necessitate corresponding amendments to DoD 6010.8–R.

This rule will reduce the number of claims which must be referred to the Department of Justice, facilitate more timely resolution of CHAMPUS claims, diminish the size of the backlog of claims which, under the old system, only the Department of Justice was authorized to review, and enhance the timeliness of reviews.

## VI. Regulatory Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. This is not an economically significant regulatory action under the provisions of Executive Order 12866 for the following reasons:

The PFPWD annual government cost has not exceeded $9 million.

We expect the inclusion of qualified self-employed occupational therapists as CHAMPUS-authorized individual professional providers will result in no additional costs. Occupational therapist services are currently available when billed through other sources.

The telephone services exclusion modification is not expected to increase the volume (or cost) of covered procedures relative to the volume anticipated to have been acceptably performed in a different manner in the absence of this change.

The addition of a definition for qualifying CHAMPUS-supplement insurance plans only provides CHAMPUS beneficiaries with criteria for identification of plans which CHAMPUS will treat as second-pay insurance plans.

The CHAMPUS adoption of Federal Claims Collection Act and the Federal Claims Collection Standards is only a linkage to existing Federal law and regulation.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. We certify that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act for the following reasons:

The PFPWD simplification of the administrative structure does not alter the CHAMPUS pricing methods for PFPWD services or items nor the scope of providers of PFPWD covered services or items.

The inclusion of qualified self-employed occupational therapists as authorized individual professional providers will not significantly affect the provision of services by these individuals.

The telephonic services exclusion modification does not add or remove requirements for providers of services to CHAMPUS beneficiaries or substantially alter the scope of services which providers have found to be covered by the CHAMPUS.

The CHAMPUS-supplement insurance definition only provides CHAMPUS beneficiaries with criteria for identification of plans which CHAMPUS will treat as second-pay insurance plans.

The CHAMPUS adoption of Federal Claims Collection Act and the Federal Claims Collection Standards is only a linkage to existing Federal law and regulation. OMB has reviewed this rule as a significant rulemaking pursuant to EO12866.

## List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is amended by removing the definitions for ''Management plan'', ''Mental retardation'', ''Physical handicap'', ''Program for the handicapped (PFTH)'', and ''Special tutoring'', and by revising the last sentence of the note following the definition of ''Domiciliary care'', and by adding definitions for ''Durable equipment'', ''Habilitation'', ''Handicap'', ''Major life activity'', ''Not-for-profit entity'', ''Occupational therapist'', ''Program for Persons with Disabilities (PFPWD)'', ''Public facility'', ''Public facility adequacy'', ''Public facility availability'', ''Rehabilitation'', ''Serious physical disability'', ''State,'' and ''Supplemental insurance plan'' in alphabetical order to read as follows:

### § 199.2 Definitions.

* * * * *

(b) * * *

*Domiciliary care.* * * *

**Note:** * * * Domiciliary care is not covered under either the CHAMPUS Basic Program or the Program for Persons with Disabilities (PFPWD).

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*Durable equipment.* A device or apparatus which does not qualify as Durable Medical Equipment (as defined in this section), and which is essential to the efficient arrest or reduction of functional loss resulting from a qualifying condition as provided by § 199.5.

* * * * *

*Habilitation.* The provision of functional capacity, absent from birth due to congenital anomaly or developmental disorder, which facilitates performance of an activity in the manner, or within the range considered normal, for a human being.

* * * * *

*Handicap.* For the purposes of this part, the term ''handicap'' is synonymous with the term ''disability.''

* * * * *

*Major life activity.* Breathing, cognition, hearing, seeing, and age appropriate ability essential to bathing, dressing, eating, grooming, speaking, stair use, toilet use, transferring, and walking.

* * * * *

*Not-for-profit entity.* An organization or institution owned and operated by one or more nonprofit corporations or associations formed pursuant to applicable state laws, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

*Occupational therapist.* A person who is trained specially in the skills and techniques of occupational therapy (that is, the use of purposeful activity with individuals who are limited by physical injury of illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences, or the aging process in order to maximize independence, prevent disability, and maintain health) and who is licensed to administer occupational therapy treatments prescribed by a physician.

* * * * *

*Program for Persons with Disabilities PFPWD).* The CHAMPUS benefits described in § 199.5.

* * * * *

*Public facility.* A public authority or entity legally constituted within a State (as defined in this section) to administer, control or perform a service function for public health, education or human services programs in a city, county, or township, special district, or other political subdivision, or such combination of political subdivisions or

special districts or counties as are recognized as an administrative agency for a State's public health, education or human services programs, or any other public institution or agency having administrative control and direction of a publicly funded health, education or human services program.

*Public facility adequacy.* An available public facility shall be considered adequate when the Director, OCHAMPUS, or designee, determines that the quality, quantity, and frequency of an available service or item otherwise allowable as a CHAMPUS benefit is sufficient to meet the beneficiary's specific disability related need in a timely manner.

*Public facility availability.* A public facility shall be considered available when the public facility usually and customarily provides the requested service or item to individuals with the same or similar disability related need as the otherwise equally qualified CHAMPUS beneficiary.

* * * * *

*Rehabilitation.* The reduction of an acquired loss of ability to perform an activity in the manner, or within the range considered normal, for a human being.

* * * * *

*Serious physical disability.* Any physiological disorder or condition or anatomical loss affecting one or more body systems which has lasted, or with reasonable certainty is expected to last, for a minimum period of 12 contiguous months, and which precludes the person with the disorder, condition or anatomical loss from unaided performance of at least one Major Life Activity as defined in this section.

* * * * *

*State.* For purposes of this part, any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States.

* * * * *

*Supplemental insurance plan.* A health insurance policy or other health benefit plan offered by a private entity to a CHAMPUS beneficiary, that primarily is designed, advertised, marketed, or otherwise held out as providing payment for expenses incurred for services and items that are not reimbursed under CHAMPUS due to program limitations, or beneficiary liabilities imposed by law. CHAMPUS recognizes two types of supplemental plans, general indemnity plans, and those offered through a direct service health maintenance organization (HMO).

(1) An indemnity supplemental insurance plan must meet all of the following criteria:

(i) It provides insurance coverage, regulated by state insurance agencies, which is available only to beneficiaries of CHAMPUS.

(ii) It is premium based and all premiums relate only to the CHAMPUS supplemental coverage.

(iii) Its benefits for all covered CHAMPUS beneficiaries are predominantly limited to non-covered services, to the deductible and cost-shared portions of the pre-determined allowable charges, and/or to amounts exceeding the allowable charges for covered services.

(iv) It provides insurance reimbursement by making payment directly to the CHAMPUS beneficiary or to the participating provider.

(v) It does not operate in a manner which results in lower deductibles or cost-shares than those imposed by law, or that waives the legally imposed deductibles or cost-shares.

(2) A supplemental insurance plan offered by a Health Maintenance Organization (HMO) must meet all of the following criteria:

(i) The HMO must be authorized and must operate under relevant provisions of state law.

(ii) The HMO supplemental plan must be premium based and all premiums must relate only to CHAMPUS supplemental coverage.

(iii) The HMO's benefits, above those which are directly reimbursed by CHAMPUS, must be limited predominantly to services not covered by CHAMPUS and CHAMPUS deductible and cost-share amounts.

(iv) The HMO must provide services directly to CHAMPUS beneficiaries through its affiliated providers who, in turn, are reimbursed by CHAMPUS.

(v) The HMO's premium structure must be designed so that no overall reduction in the amount of the beneficiary deductibles or cost-shares will result.

* * * * *

3. Section 199.3 is amended by revising paragraphs (a), (c)(2)(i)(D), the note under paragraph (c)(2)(ii), the note under paragraph (c)(2)(iii), and the last sentence and note of paragraph (c)(2)(vi) to read as follows:

**§ 199.3 Eligibility.**

(a) *General.* This section sets forth those persons who, by the provisions of 10 U.S.C., Chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. For additional statements concerning the special requirements of the Program for Persons with Disabilities (PFPWD), refer to § 199.5. A determination that a person is eligible does not entitle such a person automatically to CHAMPUS payments. Other sections of this part set forth additional requirements that must be met before any CHAMPUS benefits may be extended. Additionally, the use of CHAMPUS may be denied if a Uniformed Services medical facility capable of providing the needed care is available.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) For benefits under the PFPWD, January 1, 1967.

(ii) * * *

**Note:** Retirees and their dependents are not eligible for benefits of the PFPWD.

(iii) * * *

**Note:** These classes do not have eligibility for benefits of the PFPWD.

* * * * *

(vi) * * * For benefits under the PFPWD, dependents of an active duty member only, January 1, 1969.

**Note.** Retirees or their dependents do not have eligibility for benefits of the PFPWD.

* * * * *

4. Section 199.4 is amended by revising paragraphs (b)(8)(iii), (b)(9)(iv), (c)(3)(x), (g)(52) and (g)(73) to read as follows:

**§ 199.4 Basic program benefits.**

* * * * *

(b) * * *

(8) * * *

(iii) RTC day limits do not apply to services provided under the Program for Persons with Disabilities (§ 199.5) or services provided as partial hospitalization care.

(9) * * *

(iv) Acute care day limits do not apply to services provided under the Program for Persons with Disabilities (§ 199.5) or services provided as partial hospitalization care.

* * * * *

(c) * * *

(3) * * *

(x) *Physical and occupational therapy.* Assessment and treatment services of a CHAMPUS-authorized physical or occupational therapist may be cost-shared when:

(A) The services are prescribed and monitored by a physician;

(B) The purpose of the prescription is to reduce the disabling effects of an illness, injury, or neuromuscular disorder; and

(C) The prescribed treatment increases, stabilizes, or slows the deterioration of the beneficiary's ability to perform specified purposeful activity in the manner, or within the range considered normal, for a human being.

* * * * *

(g) * * *

(52) *Telephone services.* Services or advice rendered by telephone are excluded, except that a diagnostic or monitoring procedure which incorporates electronic transmission of data or remote detection and measurement of a condition, activity, or function (biotelemetry) is not excluded when:

(i) The procedure without electronic transmission of data or biotelemetry is otherwise an explicit or derived benefit of this section; and

(ii) The addition of electronic transmission of data or biotelemetry to the procedure is found by the Director, CHAMPUS, or designee, to be medically necessary and appropriate medical care which usually improves the efficiency of the management of a clinical condition in defined circumstances; and

(iii) That each data transmission or biotelemetry device incorporated into a procedure that is otherwise an explicit or derived benefit of this section, has been classified by the U.S. Food and Drug Administration, either separately or as a part of a system, for use consistent with the defined circumstances in paragraph (g)(52)(ii) of this section.

* * * * *

(73) *Economic interest in connection with mental health admissions.* Inpatient mental health services (including both acute care and RTC services) are excluded for care received when a patient is referred to a provider of such services by a physician (or other health care professional with authority to admit) who has an economic interest in the facility to which the patient is referred, unless a waiver is granted. Requests for waiver shall be considered under the same procedure and based on the same criteria as used for obtaining preadmission authorization (or continued stay authorization for emergency admissions), with the only additional requirement being that the economic interest be disclosed as part of the request. The same reconsideration and appeals procedures that apply to day limit waivers shall also apply to decisions regarding requested waivers of the economic interest exclusion. However, a provider may appeal a reconsidered determination that an economic relationship constitutes an economic interest within the scope of the exclusion to the same extent that a provider may appeal determinations under § 199.15(i)(3). This exclusion does not apply to services under the Program for Persons with Disabilities (§ 199.5) or provided as partial hospital care. If a situation arises where a decision is made to exclude CHAMPUS payment solely on the basis of the provider's economic interest, the normal CHAMPUS appeals process will be available.

* * * * *

5. Section 199.5 is revised to read as follows:

**§ 199.5 Program for Persons with Disabilities (PFPWD).**

(a) *General.* This PFPWD provides financial assistance for certain CHAMPUS beneficiaries who are moderately or severely mentally retarded, or seriously physically disabled. The PFPWD is not intended to be a stand alone benefit.

(1) *Purpose.* The primary purpose of the PFPWD is to assist in reducing the disabling effects of a PFPWD qualifying condition.

(2) *Benefit source election.* A PFPWD beneficiary (or sponsor or guardian acting on behalf of the beneficiary) may elect to use the provisions of either this section, or the provisions of § 199.4, for a specific service or item which is allowable by both sections.

(i) *Election limitation.* No amount for authorized, or otherwise allowed, PFPWD services or items remaining after the maximum PFPWD benefit dollar amount has been reached in a given month may be cost-shared through the provisions of § 199.4.

(ii) *Election change.* A beneficiary (or sponsor or guardian acting on behalf of the beneficiary) shall have the right to request the Director, OCHAMPUS, or designee, to allow PFPWD cost-shared services or items otherwise allowable as a benefit of § 199.4, and which were rendered after the catastrophic loss protection provision applicable to § 199.4 was in effect for a given PFPWD beneficiary's sponsor, to be readjudicated according to the provisions of § 199.4. The Director, OCHAMPUS, or designee, shall allow readjudication when the sponsor's family's CHAMPUS benefit year cost-share liability would be reduced by such readjudication. Such requests are subject to the claims filing deadline provisions of § 199.7. The determination regarding readjudication is conclusive and may not be appealed.

(3) *Application required.* A beneficiary shall establish PFPWD eligibility as a prerequisite to authorization or payment of any PFPWD benefits. Subsequent review of the PFPWD qualifying condition to confirm continued eligibility shall be made in accordance with the prognosis for a change in severity such that the condition would not likely continue to be a PFPWD qualifying condition.

(4) *Benefit authorization.* To establish whether a requested service or item is a PFPWD benefit, the beneficiary (or sponsor or guardian acting on the behalf of the beneficiary) shall provide such information about how the requested benefit will contribute to confirming, arresting, or reducing the disabling effects of the qualifying condition as the Director, OCHAMPUS, or designee, determines necessary for benefit adjudication.

(i) *Written authorization.* The Director, OCHAMPUS, or designee, may require written authorization for any PFPWD category or type of service or item as a prerequisite for adjudication of related claims.

(ii) *Format.* An authorization issued by the Director, OCHAMPUS, or designee, shall specify, such description, dates, amounts, requirements, limitations or information as necessary for exact identification of approved benefits and efficient adjudication of resulting claims.

(iii) *Valid period.* An authorization for a particular PFPWD service or item shall not exceed six consecutive months.

(iv) *Authorization waiver.* The Director, OCHAMPUS, or designee, shall waive the requirement for a written CHAMPUS authorization for rendered PFPWD services or items that, except for the absence of the written CHAMPUS authorization, would be allowable as a PFPWD benefit.

(v) *Public facility use.* A PFPWD beneficiary residing within a State, as defined in § 199.2, must demonstrate that a public facility, as defined in § 199.2, funds, except funds administered under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) is not available or adequate, as defined in § 199.2, to meet the qualifying condition related need.

(A) Equipment repair or maintenance for beneficiary owned equipment shall be considered not available when the equipment is a type allowable as a benefit.

(B) A beneficiary shall not be required to change the provider of public facility funded therapy when public facility funding is depleted during that beneficiary's course of therapy and when such a change is determined by the Director, OCHAMPUS, or designee, to be clinically contraindicated. When contraindicated, other public facilities

for the therapy shall not be considered adequate for the beneficiary.

(5) *Public facility use certification.* Written certification, in accord with information requirements, formats, and procedures established by the Director, OCHAMPUS, or designee that requested PFPWD services or items cannot be obtained from public facilities because the services or items are not available, or if available, are not adequate, is a prerequisite for PFPWD benefit payment.

(i) A Military Treatment Facility (MTF) Commander, or designee, may make such certification for a beneficiary residing within a defined geographic area.

(ii) An administrator of a public facility, or designee, may make such certification for a beneficiary residing within the service area of that public facility.

(iii) The domicile of the beneficiary shall be the basis for the determination of public facility availability when the sponsor and beneficiary are separately domiciled due to the sponsor's move to a new permanent duty station or due to legal custody requirements.

(iv) The Director, OCHAMPUS, or designee, may determine, on a case-by-case basis, that apparent public facility availability for a requested type of service or item can not be substantiated for a specific beneficiary's request for PFPWD benefits and is not available.

(A) A case-specific determination shall be shall be based upon a written statement by the beneficiary (or sponsor or guardian acting on behalf of the beneficiary) which details the circumstances wherein a specific individual representing a specific public facility refused to provide a public facility use certification, and such other information as the Director, OCHAMPUS, or designee determines to be material to the determination.

(B) A case-specific determination of public facility availability by the Director, OCHAMPUS, or designee, is conclusive, and is not appealable.

(6) *Equipment.* (i) An item of equipment shall not be authorized when such authorization would allow concurrent PFPWD cost-sharing of more than one item of the same type of equipment for the same beneficiary.

(ii) Reasonable repairs and maintenance shall be allowable for any beneficiary owned equipment otherwise allowable by this section.

(7) *Implementing instructions.* The Director, OCHAMPUS, or designee shall issue policies, instructions, procedures, guidelines, standards, and criteria necessary to assure the quality and efficiency of services and items furnished as a PFPWD benefit and to otherwise accomplish the purpose of the PFPWD.

(i) *Other requirements.* All provisions of this part, except the provisions of § 199.4, apply to the PFPWD unless otherwise provided by this section.

(ii) *Continuity of eligibility.* A CHAMPUS beneficiary who has an outstanding Program for the Handicapped (PFTH) benefit authorization during the 30 calendar day period immediately prior to the effective date of the Program for Persons with Disabilities (PFPWD) shall be deemed to have a PFPWD qualifying condition for the duration of the period during which the beneficiary is otherwise eligible for PFPWD and the beneficiary continues to meet the applicable PFTH qualifying condition criteria.

(b) *Eligibility*—(1) *Spouse or child.* PFPWD benefits are limited to a CHAMPUS eligible child or spouse, but not a former spouse, except as provided in paragraph (b)(1)(ii) of this section, of:

(i) *Active duty sponsor.* An active duty member of one of the Uniformed Services as determined in accordance with the provisions of § 199.3; or

(ii) *Former member sponsor.* After November 13, 1986, a former member of a Uniformed Service, when the qualifying condition is the result of, or has been exacerbated by, an injury or illness resulting from physical or emotional abuse; or

(iii) *Deceased sponsor.* A CHAMPUS beneficiary who is receiving PFPWD benefits at the time of the death of the sponsoring active duty Uniformed Service member remains eligible for PFPWD benefits through midnight of the beneficiary's twenty-first birthday when the sponsor died after January 1, 1997, and the sponsor was, at the time of death, eligible for receipt of hostile-fire pay or died as a result of disease or injury incurred while eligible for such pay.

(2) *Loss of PFPWD eligibility.* Eligibility for PFPWD benefits ceases as of 12.:01 a.m. of the day following the day that:

(i) The sponsor ceases to be an active duty member for any reason other than death; or

(ii) Eligibility based upon the abused dependent provisions of paragraph (b)(1) of this section expires; or

(iii) Eligibility based upon the deceased sponsor provisions of paragraph (b)(1) of this section expires; or

(iv) The Director, OCHAMPUS, or designee, determines that the beneficiary no longer has a qualifying condition.

(3) *Qualifying condition*—(i) *Mental retardation.* A diagnosis of moderate or severe mental retardation made in accordance with the criteria of the current edition of the ''Diagnostic and Statistical Manual of Mental Disorders'' published by the American Psychiatric Association is a PFPWD qualifying condition.

(ii)*Serious physical disability.* A serious physical disability as defined in § 199.2, is a PFPWD qualifying condition.

(iii) *Infant/toddler.* For CHAMPUS beneficiaries under the age of three years with a diagnosed neuromuscular developmental condition or Down syndrome, or other condition that can to a reasonable medical probability be expected to precede a diagnosis of moderate or severe mental retardation or be characterized as a serious physical disability before the age of seven, the Director, OCHAMPUS, or designee, shall establish criteria for PFPWD eligibility in lieu of the requirements of paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section.

(iv) *Multiple disabilities.* The cumulative disabling effect shall be used in the adjudication of a qualifying condition determination when an applicant has two or more disabilities involving separate body systems.

(c) *Benefit.* Items or services which the Director, OCHAMPUS, or designee, has determined to be intrinsic to the following benefit categories and has determined to be capable of confirming, arresting, or reducing the severity of the disabling effects of a qualifying condition, generally or in a specific case, and which are not otherwise excluded by this PFPWD, may be allowed.

(1) *Diagnostic procedures* to establish a qualifying condition diagnosis or to measure the extent of functional loss.

(2) *Treatment* through the use of such medical, habilitative, or rehabilitative methods, techniques, therapies and equipment which otherwise meet the requirements of this PFPWD. Treatment includes, but is not limited to, prosthetic devices, orthopedic braces, and orthopedic appliances. Otherwise allowable treatment may be rendered in-home, or as inpatient or outpatient care as appropriate.

(3) *Training* when required to allow the use of an assistive technology device or to acquire skills which are expected to assist the beneficiary to reduce the disabling effects of a qualifying condition and for parents (or guardian) and siblings of a PFPWD beneficiary when required as an integral part of the management of the qualifying condition.

(4) *Special education instruction,* other than training specifically designed to accommodate the disabling effects of a qualifying condition.

(5) *Institutional care* within a State, as defined in § 199.2, when the severity of the qualifying condition requires protective custody or training in a residential environment.

(6) *Transportation* when required to convey the PFPWD beneficiary to or from a facility or institution to receive otherwise allowable services or items. Transportation for a medical attendant may be approved when medically necessary for the safe transport of the PFPWD eligible beneficiary.

(7) *Adjunct services*—(i) *Assistive services.* Services of a qualified interpreter or translator for PFPWD beneficiaries who are deaf, readers for PFPWD beneficiaries who are blind, and personal assistants for PFPWD beneficiaries with other types of qualifying conditions, when such services are not directly related to the rendering or delivery of service or item otherwise an allowable PFPWD benefit.

(ii) *Equipment adaptation.* The allowable equipment purchase shall encompass such services and structural modification to the equipment as necessary to make the equipment serviceable for a particular disability.

(iii) *Equipment maintenance.* Reasonable repairs and maintenance for that portion of the useful life of beneficiary owned equipment that is concurrent with the beneficiary's PFPWD eligibility.

(d) *Exclusions*—(1) *Inpatient acute care* for medical or surgical treatment of an acute illness, or of an acute exacerbation of the qualifying condition, is excluded.

(2) *Structural alterations* to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment, or to facilitate entrance or exit, are excluded.

(3) *Homemaker, sitter, or companion services,* except as institutional care of adjunct services, which predominantly provide assistance with daily living activities or accomplish household chores or provide companionship or provide supervision or observation, or any combination of these functions, are excluded.

(4) *Dental care or orthodontic treatment* is excluded.

(5) *Nondomestic travel* which originates or terminates outside of a State, as defined in § 199.2, is excluded.

(6) *Deluxe travel accommodation* price differential between the price for a type of accommodation which provides services or features which exceed the requirements of the beneficiary's condition for safe transport and the price for a type of accommodation without those deluxe features, is excluded.

(7) *Equipment.* Exclusions for durable medical equipment at § 199.4(d)(3)(ii)(D) apply to all PFPWD allowable equipment.

(8) *Medical devices.* Prosthetic devices and medical equipment which do not meet the benefit requirements of § 199.4 are excluded.

(9) *No obligation to pay.* Services or items for which the beneficiary or sponsor has no legal obligation to pay, or for which no charge would be made if the beneficiary was not eligible for the CHAMPUS, are excluded.

(10) *Public facility or Federal government.* Services or items paid for, or eligible for payment, directly or indirectly by a Public Facility, as defined in § 199.2, or by the Federal government, other than the Department of Defense, are excluded, except when such services or items are eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid).

(11) *Study, grant, or research programs.* Services and items provided as a part of a scientific clinical study, grant, or research program are excluded.

(12) *Unproven drugs, devices, and medical treatments or procedures.* Services and items whose safety and efficacy have not been established as described in § 199.4 are unproven and cannot be cost-shared by CHAMPUS.

(13) *Immediate family or household.* Services or items provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household, are excluded.

(14) *Court or agency ordered care.* Services or items ordered by a court or other government agency that are not otherwise a legitimate PFPWD benefit are excluded.

(15) *Excursions.* Additional or special charges for excursions, other than otherwise allowable transportation, are excluded even though part of a program offered by an approved provider.

(16) *Drugs and medicines.* Drugs and medicines which do not meet the benefit requirements of § 199.4 are excluded.

(17) *Therapeutic absences.* Therapeutic absences from an inpatient facility are excluded.

(e) *Cost-share liability*—(1) *No deductible.* PFPWD benefits are not subject to a deductible amount.

(2) *Sponsor/beneficiary cost-share liability.* The total sponsor cost-share for allowed PFPWD benefits in a given month may not exceed the amount for the sponsor's pay grade as specified below, regardless of the number of dependents of that same sponsor receiving PFPWD benefits in a given month:

| Member's pay grade | Monthly share |
|---|---|
| E–1 through E–5 | $25 |
| E–6 | 30 |
| E–7 and O–1 | 35 |
| E–8 and O–2 | 40 |
| E–9, W–1, W–2, and O–3 | 45 |
| W–3, W–4, and O–4 | 50 |
| O–5 | 65 |
| O–6 | 75 |
| O–7 | 100 |
| O–8 | 150 |
| O–9 | 200 |
| O–10 | 250 |

(3) *Government cost-share liability: member who sponsors one PFPWD beneficiary.* The government share of the cost of any PFPWD benefit provided in a given month to a beneficiary who is the sponsor's only PFPWD eligible dependent may not exceed $1,000 in a given month, after application of allowable payment methodology.

(4) *Government cost-share liability: member who sponsors two or more PFPWD beneficiaries.* The government share of the cost of any PFPWD benefits provided in a given month, after October 1, 1966, to a beneficiary who is one of two or more PFPWD eligible dependents of the same sponsor shall be determined as follows:

(i) *Maximum benefit limit determination.* The $1,000 maximum monthly government PFPWD benefit amount shall apply to the beneficiary incurring the least amount of allowable PFPWD expense in a given month, after application of allowable payment methodology. When two or more PFPWD eligible beneficiaries have exactly the same amount of allowable PFPWD expense in a given month, and that amount is determined to be the least amount for the sponsor's family group, the $1,000 maximum monthly benefit in that month shall apply to only one of the PFPWD eligible beneficiaries in the family group.

(ii) *Maximum benefit limit exception.* For all other PFPWD dependents of the same sponsor with allowable PFPWD expense in a given month, the $1,000 maximum monthly benefit does not apply, and the government shall cost-share the entire amount for otherwise allowable services or items received in that month.

(f) *Benefit payment*—(1) *Equipment.* The allowable amount for equipment shall be calculated in the same manner

as durable medical equipment allowable through § 199.4.

(2) *Transportation.* The allowable amount for transportation is limited to the actual cost of the standard published fare plus any standard surcharge made to accommodate any person with a similar disability or to the actual cost of specialized medical transportation when nonspecialized transport cannot accommodate the beneficiary's disability related needs, or when specialized transport is more economical than nonspecialized transport. When transport is by private vehicle, the allowable amount is limited to the Federal government employee mileage reimbursement rate in effect on the trip date.

(3) *Proration of equipment expense.* The PFPWD beneficiary (or sponsor or guardian acting on the beneficiary's behalf) may, only at the time of the request for authorization of equipment, specify that the allowable cost of the equipment be prorated. Equipment expense proration permits the allowable cost of an item of PFPWD authorized equipment to be apportioned so that no portion of the allowable cost exceeds the monthly benefit limit and allows each apportioned amount to be separately authorized as a benefit during subsequent contiguous months.

(i) *Maximum period.* The maximum number of contiguous months during which a prorated amount may be authorized for cost-share shall be the lesser of:

(A) The number of months calculated by dividing the initial allowable cost for the item of equipment by $1,000 and doubling the resulting quotient; or

(B) The number of months of useful equipment life for the requesting beneficiary, as determined by the Director, OCHAMPUS, or designee.

(ii) *Cost-share.* A cost-share is applicable in any month in which a prorated amount is authorized, subject to the cost-share provisions for a sponsor with two or more PFPWD eligible beneficiaries.

(iii) *Termination.* Prorated payments shall be terminated as of the first day of the month following the death of a beneficiary or as of the effective date of a beneficiary's loss of PFPWD eligibility for any other reason.

(4) *For-profit institutional care provider.* Institutional care provided by a for-profit entity may be allowed only when the care for a specific PFPWD beneficiary:

(i) Is contracted for by a public facility, as defined in § 199.2, as a part of a publicly funded long-term inpatient care program; and

(ii) Is provided based upon the PFPWD beneficiary's being eligible for the publicly funded program which has contracted for the care; and

(iii) Is authorized by the public facility as a part of a publicly funded program; and

(iv) Would cause a cost-share liability in the absence of CHAMPUS eligibility; and

(v) Produces a PFPWD beneficiary cost-share liability that does not exceed the maximum charge by the provider to the public facility for the contracted level of care.

(g) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

6. Section 199.6 is amended by removing and reserving paragraphs (a)(4) and (b)(4)(x)(B)(*2*), revising paragraph (c)(3)(iii)(I)(*3*), redesignating paragraphs (e) and (f) as paragraphs (f) and (g) and by adding a new paragraph (e) to read as follows:

**§ 199.6 Authorized providers.**

(a) * * *

(4) [Reserved]

* * * * *

(b) * * *

(4) * * *

(x) * * *

(B) * * *

(*2*) [Reserved]

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(I) * * *

(*3*) Licensed registered physical therapists and occupational therapists.

* * * * *

(e) *Program for Persons with Disabilities Providers.*—(1) *General.* (i) Services and items cost-shared through § 199.5 must be rendered by a CHAMPUS-authorized provider.

(ii) A Program for the Handicapped (PFTH) provider with CHAMPUS-authorized status on the effective date for the Program for Persons with Disabilities (PFPWD) shall be deemed to be a CHAMPUS-authorized PFPWD provider until all outstanding PFTH benefit authorizations for services or items being rendered by the provider expire.

(2) *PFPWD provider categories.*—(i) *PFPWD inpatient care provider.* A provider of residential institutional care which is otherwise a PFPWD benefit shall be:

(A) A not-for-profit entity or a public facility, as defined in § 199.2; and

(B) Located within a State, as defined in § 199.2; and

(C) Be certified as eligible for Medicaid payment in accordance with a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) as a Medicaid Nursing Facility, or Intermediate Care Facility for the Mentally Retarded, or be a CHAMPUS-authorized Institutional Provider as defined in paragraph (b) of this section, or be approved by a State educational agency as a training institution.

(ii) *PFPWD outpatient care provider.* A provider of PFPWD outpatient, ambulatory, or in-home services shall be:

(A) A CHAMPUS-authorized provider of services as defined in this section; or

(B) An individual, corporation, foundation, or public entity that predominantly renders services of a type uniquely allowable as a PFPWD benefit and not otherwise allowable as a benefit of § 199.4, that meets all applicable licensing or other regulatory requirements that are extant in the state, county, municipality, or other political jurisdiction in which the PFPWD service is rendered.

(iii) *PFPWD vendor.* A provider of an allowable PFPWD item, supply, equipment, orthotic, or device shall be deemed to be a CHAMPUS-authorized vendor for the provision of the specific item, supply, equipment, orthotic, or device when the vendor supplies such information as the Director, OCHAMPUS, or designee, determines necessary to adjudicate a specific claim.

(3) *PFPWD provider exclusion or suspension.* A provider of PFPWD services or items may be excluded or suspended for a pattern of discrimination on the basis of disability. Such exclusion or suspension shall be accomplished according to the provisions of § 199.9.

* * * * *

7. Section 199.7 is amended by revising paragraphs (a)(2), (b)(2)(xii) and (f)(2), removing paragraph (f)(3), redesignating paragraph (f)(4) as paragraph (f)(3), and adding a new paragraph (f)(4) to read as follows:

**§ 199.7 Claims submission, review, and payment.**

(a) * * *

(2) *Claim required.* No benefit may be extended under the Basic Program or Program for Persons with Disabilities (PFPWD) without the submission of a complete and properly executed appropriate claim form.

* * * * *

(b) * * *

(2) * * *

(xii) *Other authorized providers*. For items from other authorized providers (such as medical supplies), an explanation as to the medical need must be attached to the appropriate claim form. For purchases of durable equipment under the PFPWD, it is necessary also to attach a copy of the preauthorization.

* * * * *

(f) * * *

(2) *Treatment plan*. Each preauthorization request shall be accompanied by a proposed medical treatment plan (for inpatient stays under the Basic Program) which shall include generally a diagnosis; a detailed summary of complete history and physical; a detailed statement of the problem; the proposed treatment modality, including anticipated length of time the proposed modality will be required; any available test results; consultant's reports; and the prognosis. When the preauthorization request involves transfer from a hospital to another inpatient facility, medical records related to the inpatient stay also must be provided.

* * * * *

(4) *Advance payment prohibited*. No CHAMPUS payment shall be made for otherwise authorized services or items not yet rendered or delivered to the beneficiary.

* * * * *

8. Section 199.8 is amended by revising paragraphs (b)(3)(ii) and (d)(4) to read as follows:

**§ 199.8 Double coverage.**

* * * * *

(b) * * *

(3) * * *

(ii) Coverage specifically designed to supplement CHAMPUS benefits (a health insurance policy or other health benefit plan that meets the definition and criteria under supplemental insurance plan as set forth in § 199.2(b));

* * * * *

(d) * * *

(4) *Program for persons with disabilities (PFPWD).* A PFPWD eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, OCHAMPUS, or designee, to be available and adequate to meet a disability related need for which a PFPWD benefit was requested. Benefits eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of PFPWD benefits.

* * * * *

9. Section 199.11 is amended by revising paragraph (g)(1) to read as follows:

**§ 199.11 Overpayments recovery.**

* * * * *

(g) * * *

(1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of the CHAMPUS may be compromised or collection action taken thereon may be suspended or terminated in compliance with the Federal Claims Collection Act, 31 U.S.C. 3711(a)(2) as implemented by the Federal Claims Collection Standards, 4 CFR parts 101 through 105.

* * * * *

10. Section 199.20 is amended by revising paragraph (p)(2)(i) to read as follows:

**§ 199.20 Continued Health Care Benefit Program (CHCBP).**

* * * * *

(p) * * *

(2) * * *

(i) The Program for Persons with Disabilities under § 199.5;

* * * * *

## Appendix A to Part 199—[Amended]

11. Appendix A to Part 199 is amended by revising ''PFTH—Program for the Handicapped'' to read ''PFPWD—Program for Persons with Disabilities''.

Dated: June 24, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–17001 Filed 6–27–97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD08–97–018]**

**RIN 2115–AE84**

## Amendment to Regulated Navigation Area Regulations; Lower Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** On March 18, 1997, the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. These regulations were subsequently amended on March 21, March 28, April 4, April 15 and April 19. The amendments added additional operating requirements for vessels of 1,600 gross tons or greater, increased the operating limitations on tank barges and ships carrying hazardous chemicals and gasses, and extended the RNA to the boundary of the territorial sea at the approaches to Southwest Pass. On April 15, in response to moderating river conditions, the regulations were relaxed to permit tows of up to 30 barges to operate when being pushed by two boats of 9,000 brake horsepower or greater.

On April 20, the towboat and barge limitations and the chemical and gas ship operating restrictions expired. The regulations affecting self-propelled vessels of 1,600 gross tons or greater were extended until July 1, 1997.

In the interest of navigation safety in the narrow confines of the Lower Mississippi River, the Coast Guard is extending the regulations affecting self-propelled vessels of 1,600 gross tons or greater until October 31, 1997. This action is being taken in order to keep the deep-draft regulations in effect pending issuance of a notice of proposed rulemaking that will seek public comment on making the regulations permanent.

The regulated navigation area is needed to protect vessels, bridges, shore-side facilities and the public from a safety hazard created by deep-draft vessel operations along the Lower Mississippi River. Self-propelled vessels of 1,600 or more gross tons are prohibited from operating in this area unless they are in compliance with this regulation.

**EFFECTIVE DATES:** This amended regulation is effective from 12 p.m. on July 1, 1997 and terminates at 12 p.m. on October 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** CDR Harvey R. Dexter, Marine Safety Division, USCG Eighth District at New Orleans, LA (504) 589–4860.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

On March 18, 1997 (62 FR 14637, March 22, 1997), the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. On March 21, 1997 (62 FR 15398, April 4, 1997), the Coast Guard amended the temporary regulated navigation area by extending the